



NORTH CAROLINA LAW REVIEW

Volume 11 | Number 1

Article 13

12-1-1932

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Recommended Citation

A. E. Garrett Jr., *Husband and Wife -- Presumptions -- Transfer of Property From Wife to Husband*, 11 N.C. L. REV. 84 (1932).
Available at: <http://scholarship.law.unc.edu/nclr/vol11/iss1/13>

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Only a very few jurisdictions hold that such repurchase agreements are unenforceable.¹⁸ No case has been found in North Carolina involving a repurchase agreement, but since this jurisdiction permits a corporation to purchase its stock,¹⁹ there seems little doubt that the Supreme Court will hold such an agreement valid.

This apparent effort of the courts to give effect to repurchase agreements can perhaps be explained by the general desirability and usefulness of such agreements. They form a necessary adjunct to most employee stock-holding schemes, enabling employees to share in the profits of the business.²⁰ Further, this type of agreement aids in inducing otherwise reluctant investors to purchase corporate stock.²¹ Undoubtedly, however, opportunity is given for the creation of a favored class of stockholders to the possible detriment of non-assenting stockholders.²² Such a possibility is well illustrated in the principal case, where the favored stockholder is allowed to dispose of his stock to the corporation at a price five times greater than the market value. If the stockholders consider such discrimination unfair, they should be allowed to prevent it by a specific corporate by-law or charter restriction; for a general legislative prohibition, in attempting to stamp out possible abuses, would make unavailable the beneficial effects of repurchase agreements.

ROBERT A. HOVIS.

Husband and Wife—Presumptions—Transfer of Property From Wife to Husband.

Husband and wife owned land; the profits therefrom and the proceeds of a sale of it were invested by the husband in his business. After judgment against him by a creditor, the husband executed a 2; *Mulford v. Torrey Exploration Co.*, *supra* note 14. See Note (1927) 36 MICH. L. REV. 790 at 794 to the effect that such a distinction is not generally recognized.

¹⁸ *Civil Service Inv. Ass'n. v. Thomas*, 138 Tenn. 77, 195 S. W. 775 (1917); *Morril v. Mastin*, 23 N. M. 563, 170 Pac. 45 (1918); *Pothier v. Reid Air Spring Co.*, 103 Conn. 380, 130 Atl. 383 (1925). But *cf.* *Topken, Loring & Schwartz, Inc. v. Schwartz*, 249 N. Y. 206, 163 N. E. 735 (1928).

¹⁹ Cases cited *supra* note 4.

²⁰ *Levy*, *supra* note 9, at 2 and 32; *Fordham, Some Legal Aspects of Employee Stock Purchase Plans* (1930) 8 N. C. L. REV. 161.

²¹ It is obvious, of course, that a purchase with such an agreement presents an attractive investment, for it gives the purchaser an opportunity to escape what might be a bad investment. *Vent v. Duluth Coffee & Spice Co.*, *supra* note 13; *Schulte v. Blvd. Gardens Land Co.*, *supra* note 14.

²² *Levy*, *supra* note 9, at 7 and 34. The author severely criticizes such stock-selling schemes, pointing out the abuses which are often attendant upon such practices.

deed of trust to secure the alleged debt due the wife. In a creditor's suit to set aside the trust deed, *held*, the decree of the lower court adjudging the trust deed valid and dismissing the bill was error, for a presumption of a gift to the husband arises and the burden is upon the wife to show a loan and a contemporaneous promise on his part to pay the debt.¹

At common law, the attempted contracts of a married woman were absolutely void, with few exceptions.² Likewise, gifts³ between husband and wife were generally void.⁴ But modern statutes⁵ have greatly modified common law rules, so that now spouses may make gifts to each other as though the marriage relation were non-existent,⁶ if not made to defraud creditors.⁷ Such transactions are,

¹ Brunswick Bank & Trust Co. v. Valentine, 164 S. E. 569 (Va. 1932).

² TIFFANY, DOMESTIC RELATIONS (3d ed. 1921) 156; BINGHAM, THE LAW OF INFANCY AND COVERTURE (1849) 181: "Married women are by the law of England, subject, in matters of contract, to a greater disability even than infants; (a) for the contracts of an infant are, as hath been shewn, for the most part only voidable, while those of married women are, with few exceptions, absolutely void."

³ To constitute a valid gift there must be an intention of the donor to give, acceptance by the donee and delivery of the article given. Helmer v. Helmer, 159 Ga. 376, 125 S. E. 849 (1924), 37 A. L. R. 1137 (1925); Atchley v. Rimmer, 148 Tenn. 303, 255 S. W. 366 (1923), 30 A. L. R. 1481 (1924). Generally, transfer of money or other property by a debtor to one to whom he is indebted is presumed a satisfaction of the debt, not a gratuity; but an exception seems to have been made in case of a transfer by husband to wife. 71 A. L. R. 1024 (1931).

⁴ LONG, DOMESTIC RELATIONS (3d ed. 1923) 245: "Thus, a gift of money by a husband to his wife is void at law, and as inoperative as a gift to himself"; 1 BRIGHT, LAW OF HUSBAND AND WIFE AS RESPECTS PROPERTY (1850) 29: "Upon the principle of union of husband and wife so as to be but one person, the husband could not by any common law conveyance give or grant any estate to the wife, either in possession, reversion, or remainder: and the same disability prevailed in regard to the wife."

⁵ N. C. CODE ANN. (Michie, 1931) §§2506-2530 (married women's act of North Carolina); Murphy v. Wolfe, 45 S. W. (2d) 1079 (Mo. 1932); Taft v. Covington, 199 N. C. 51, 153 S. E. 597 (1930); LONG, *op. cit. supra* note 4, at 243; 1 SCHOULER, DOMESTIC RELATIONS (6th ed. 1921) 307: "Elevated to the pedestal of honor, and made the object of reverent esteem, if not idolatry, the wife stands perhaps as securely as she ever can upon the prosaic ground of legal equality"; TIFFANY, *op. cit. supra* note 2 at 159.

⁶ Murphy v. Wolfe, *supra* note 5; Hillwood v. Hillwood, 159 Md. 167, 150 Atl. 286 (1930); Birkhauser v. Ross, 102 Cal. App. 582, 283 Pac. 866 (1929); Hendrix v. Bank of Portal, 169 Ga. 264, 149 S. E. 879 (1929); Barbee v. Harvey, 214 Ky. 461, 283 S. W. 442 (1926) ("The only difference between a gift by a wife to a stranger and one made to her husband consist (*sic*) not in her right to make one to her husband, but in the probative force of the evidence establishing such gift"); Moore v. Moore, 237 Ill. App. 190 (1925). In New Jersey a wife may not contract with her husband, but may make a gift to him. Young v. Gnichtel, 28 F. (2d) 789 (D. C. N. J. 1928).

⁷ Birkhauser v. Ross; Moore v. Moore, both *supra* note 6.

however, viewed with suspicion.⁸ As between husband and wife, a transfer by the wife to her husband of personalty⁹ or realty,¹⁰ will not usually be presumed to be a gift;¹¹ whereas in the case of a transfer by the husband to his wife, there is a presumption of a gift.¹²

⁸ *Hillwood v. Hillwood*, *supra* note 6: "The law on this subject is familiar. It is that a wife may dispose of her property by gift to her husband as fully and effectually as if the transaction were between persons not occupying that relation, but, because of the natural dominance of the husband and the trust and confidence commonly incident to their union, the gift will be closely, carefully and vigorously investigated in a court of equity, and be annulled if obtained by fraud, coercion, misrepresentation or undue influence"; *Hill v. Hill*, 217 Ala. 235, 115 So. 258 (1928).

⁹ *Parker v. Staley*, 21 S. W. (2d) 200 (Mo. App. 1929) (gift of note); *Holohan v. McCarthy*, 130 Ore. 577, 281 Pac. 178 (1929) (gift of furniture); *Jent's Ex'rs v. Dodson*, 220 Ky. 181, 294 S. W. 1052 (1927). Indorsement and delivery of stock by wife to husband, together with husband's testimony that it was a gift, is sufficient to authorize inference of gift. *Mack v. Pardee*, 39 Ga. App. 310, 147 S. E. 147 (1929). Advancement of money by wife to husband to permit him to purchase stock in his name is not presumed a gift. *Gilbert v. Gilbert*, 180 Ark. 596, 22 S. W. (2d) 32 (1929). Finding that prior to death wife transferred stock to her husband by signature shows a valid gift. *Greer v. Stilwell*, 184 Ark. 1102, 44 S. W. (2d) 1082 (1932).

¹⁰ *Hendrix v. Bank of Portal*, *supra* note 6.

¹¹ *Hendrix v. Bank of Portal*, *supra* note 6, "The evidence to support it must be clear and unequivocal and the intention of the parties must be free from doubt"; *Jent's Ex'rs v. Dodson*; *Gilbert v. Gilbert*, both *supra* note 9.

¹² Where husband purchases property and takes title in his wife's name, there is a presumption of gift, not of trust. *Nordquist v. Malmberg*, 213 Cal. 394, 2 Pac. (2d) 334 (1931) (presumption not overcome by mere fact husband paid taxes and repairs alone); *Hines v. Baker*, 299 Pac. 5 (Colo. 1931); *Swendick v. Swendick*, 221 Ala. 337, 128 So. 593 (1930) ("The presumption that an advancement or gift was intended is not however a presumption of law, but one of fact, and may be overcome by proof of the real intent of the parties as reflected in the conditions and circumstances attending the transaction"); *Holohan v. McCarthy*, *supra* note 9; *Wies v. O'Horow*, 337 Ill. 267, 169 N. E. 168 (1929); *Rosecrans v. Rosecrans*, 99 N. J. Eq. 176, 132 Atl. 100 (1926). Presumption of gift of money by husband to wife, which she deposited in her name, may be overcome by parol. *Monohan v. Monohan*, 77 Vt. 133, 59 Atl. 169 (1904), 70 L. R. A. 935 (1905). Presumption may be overcome where facts show contrary intent. *Fulbright v. Phoenix Ins. Co.*, 30 S. W. (2d) 870 (Mo. App. 1930). By statute in Georgia payment of purchase money by husband or wife with title in the other is presumed a gift. GA. CODE ANN. (Michie, 1926) §3740. But parol evidence is admissible to rebut the presumption. *Romano v. Finley*, 172 Ga. 366, 157 S. E. 669 (1931). Evidence that stock was transferred by husband to wife in order to secure a loan precludes presumption of gift, requiring wife to prove gift by convincing evidence. *Platt v. Huegel*, 326 Mo. 776, 32 S. W. (2d) 605 (1930). Where husband has deed made to himself and wife, spouses become tenants by entirety, and presumption is that husband took the deed as he did as gift to wife. *Alexander v. Alexander*, 44 S. W. (2d) 872 (Mo. App. 1932). Extent that the share of purchase money contributed by the husband exceeded the part contributed by the wife for land jointly, is presumed a gift. *Coffman v. Coffman*, 103 W. Va. 285, 150 S. E. 744 (1929). As to effect upon character of estate in entirety of the fact that one spouse already had an estate in the land, see *Sprinkle v. Spainhour*, 149 N. C. 223, 62 S. E. 910, 25 L. R. A. (N. S.) 167 (1908); *Garris v.*

A wife may make a valid loan to her husband¹³ and, where there is an express promise by him to repay, the transaction is clearly a loan.¹⁴ There is some conflict of authority, however, where the husband receives and uses his wife's money or other property without an express promise of repayment. One rule is that there arises a presumption of a loan.¹⁵ Under this rule, one jurisdiction holds that a wife's laches in enforcing her equitable right to her property in her husband's hands will bar recovery as against a purchaser without notice of her rights.¹⁶ The other rule is that there arises a presumption of a gift.¹⁷ Under this rule, one jurisdiction holds that, where the wife voluntarily transfers property to her husband, which had been under her absolute control, a presumption of gift arises, but that, where property is in her husband's possession, which had

Tripp, 192 N. C. 211, 134 S. E. 461 (1926). As to whether husband may make parol gift of interest in land to wife, see 20 GEO. L. J. 533 (1931). Van Hecke and Lord, *Parol Trusts in North Carolina* (1929) 8 N. C. L. REV. 152. Savings of husband and wife invested in land in name of wife, presumed gift to wife. Beck v. Beck, 78 N. J. Eq. 544, 80 Atl. 550, 35 L. R. A. (N. S.) 712 (1911).

There is a presumption of gift in case of transfer by husband to wife because of his natural obligation to support her. Swendick v. Swendick, *supra* at 594.

¹³ A wife, as creditor of her husband, is, in general, entitled to the same remedies and has the same standing to enforce any security for the payment of her husband's debt to her as any other creditor. Littler v. Jeffries, 36 Idaho 608, 212 Pac. 866 (1923); LONG, *op. cit. supra* note 4, at 248.

¹⁴ Bast v. Bast, 68 Mont. 69, 217 Pac. 345 (1923); LONG, *op. cit. supra* note 4, at 248.

¹⁵ Etheredge v. Cochran, 196 N. C. 681, 146 S. E. 711 (1929); Colangelo v. Colangelo, 46 R. I. 138, 125 Atl. 285 (1924) noted in (1924) 23 MICH. L. REV. 301; Gilmore v. Gilmore, 270 Fed. 260 (D. C. Mont. 1921); Stickney v. Stickney, 131 U. S. 227, 9 Sup. Ct. 677, 33 L. ed. 136 (1889); Parrett v. Palmer, 8 Ind. App. 356, 52 Am. St. Rep. 479 (1893). No presumption of gift where the wife furnishes purchase money for real estate with title taken in husband's name. Wright v. Wright, 242 Ill. 71, 89 N. E. 789 (1909), 26 L. R. A. (N. S.) 161 (1910). An agreement by the husband to invest separate property of the wife in land makes him trustee for her benefit. Sparks v. Taylor, 99 Tex. 411, 90 S. W. 485, 6 L. R. A. (N. S.) 381 (1906); Adoue v. Spencer, 62 N. J. Eq. 782, 49 Atl. 10, 90 Am. St. Rep. 484, 56 L. R. A. 817 (1902); Brown v. Wright, 58 Ark. 20, 22 S. W. 1022, 21 L. R. A. 467 (1893).

¹⁶ Riley v. Martinelli, 97 Cal. 575, 32 Pac. 579, 33 Am. St. Rep. 209, 21 L. R. A. 33 (1893).

¹⁷ Nelson v. Wilson, 81 Mont. 560, 264 Pac. 679 (1928) (and no contract or presumption to pay is implied). Conveyance by wife to husband presumed a gift. White v. Amenta, 110 Conn. 314, 148 Atl. 345 (1930); Hallahan v. Hamilton, 104 N. J. L. 632, 142 Atl. 27 (1928). Money of wife invested in land in husband's name, presumed a gift. Whitten v. Whitten, 70 W. Va. 422, 74 S. E. 237, 39 L. R. A. (N. S.) 1026 (1912). As against the husband's creditors, clear proof of the husband's prior or contemporaneous promise to repay money advanced him by the wife or to convey property to her is necessary to repel a presumption of gift. Am. Finance Co. v. Leedy, 163 S. E. 626 (W. Va. 1932).

never been under her control, a presumption of gift does not arise.¹⁸ The use by the husband of income from the wife's separate estate is sometimes presumed a gift,¹⁹ even in those jurisdictions where a transfer of other property of the wife is presumed to be a loan;²⁰ likewise, where either spouse improves realty of the other.²¹

The rule that a loan is presumed is based upon the realization that a wife commonly intrusts the management of her business to her husband,²² and the rule that a gift is presumed, upon the contention that "emancipated" woman is afforded the same opportunity to protect her property rights as is her husband.²³

It is submitted that the instant case is not in harmony with the true intent and purposes of the married women's acts, for it gives woman a legal equality which strips her of actual equality. If her husband gains control of her property, she has the burden of showing it was not given to him. The cases holding that a presumption of a loan arises recognize that husbands do use their position to gain control of property of their wives; and those cases protect the actual independence of the wife and her property by placing on the husband or his creditors the burden of showing it was given to him.

A. E. GARRETT, JR.

Injunctions—Prerequisites for Preliminary Mandatory Injunctions.

Petitioner, executor under a will, was removed for his refusal to comply with a court order to account for \$80,000 worth of the estate's government bonds which he claimed to be his own. Upon

¹⁸ *Morris v. Westerman*, 79 W. Va. 502, 92 S. E. 567 (1917), 3 A. L. R. 1237 (1919); 12 R. C. L. 928.

¹⁹ *Adoue v. Spencer*, *supra* note 15.

²⁰ *Colangelo v. Colangelo*, *supra* note 15; *Haymond v. Bledsoe*, 11 Ind. App. 202, 38 N. E. 530, 54 Am. St. Rep. 502 (1894); *Estate of Hauer*, 140 Pa. 420, 21 Atl. 445, 23 Am. St. Rep. 245 (1891); 13 R. C. L. 1387; see *Etheredge v. Cochran*, *supra* note 15, at 685.

²¹ *Am. Finance Co. v. Leedy*, *supra* note 17. Improvements made during marriage on separate property of either spouse, although with community funds, belong to spouse owning the separate property. *Dunn v. Mullan*, 211 Cal. 583, 296 Pac. 604 (1931), 77 A. L. R. 1015 (1932). Expenditures by either spouse on the other's property presumed gifts, therefore not basis for equitable lien. *Nixon v. Nixon*, 100 N. J. Eq. 437, 135 Atl. 516 (1927); *Anderson v. Anderson*, 177 N. C. 401, 99 S. E. 106 (1919). Husband's payment of mortgage indebtedness on property taken by entireties presumed gift so far as wife was relieved of contribution. *Cunningham v. Cunningham*, 158 Md. 372, 148 Atl. 444 (1930).

²² *Etheredge v. Cochran*, *supra* note 15.

²³ *Brunswick Bank & Trust Co. v. Valentine*, *supra* note 17, at 571.